

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

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FRANCISCAN ALLIANCE, INC.;  
SPECIALTY PHYSICIANS OF  
ILLINOIS, LLC.;  
CHRISTIAN MEDICAL &  
DENTAL ASSOCIATIONS;

- and -

STATE OF TEXAS;  
STATE OF WISCONSIN;  
STATE OF NEBRASKA;  
COMMONWEALTH OF  
KENTUCKY, by and through  
Governor Matthew G. Bevin;  
STATE OF KANSAS; STATE OF  
LOUISIANA; STATE OF  
ARIZONA; and STATE OF  
MISSISSIPPI, by and through  
Governor Phil Bryant,

*Plaintiffs,*

v.

SYLVIA BURWELL, Secretary  
of the United States Department of  
Health and Human Services; and  
UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

*Defendants.*

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**NOTICE OF FILING  
EVIDENCE IN SUPPORT OF  
STATE PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Civ. Action No. 7:16-cv-00108-O

The State Plaintiffs, by and through counsel, hereby submit the attached Declaration of Robert P. Kukla in support of their motion for preliminary injunction.

Respectfully submitted this the 19th day of December, 2016.

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/s/ Austin R. Nimocks  
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STATE OF TEXAS; STATE OF  
WISCONSIN; STATE OF  
NEBRASKA; COMMONWEALTH  
OF KENTUCKY, by and through  
Governor Matthew G. Bevin;  
STATE OF KANSAS; STATE OF  
LOUISIANA, STATE OF ARIZONA, and  
STATE OF MISSISSIPPI, by and through  
Governor Phil Bryant*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2016, I electronically filed the foregoing document through the Court's ECF system, which automatically serves notification of the filing on counsel for all parties.

*/s/ Austin R. Nimocks*  
AUSTIN R. NIMOCKS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

FRANCISCAN ALLIANCE, INC., *et al.*,

*Plaintiffs,*

**No. 7:16-cv-00108**

v.

SYLVIA BURWELL, *et al.*,

*Defendants.*

**DECLARATION OF  
ROBERT P. KUKLA**

I, Robert P. Kukla, am a citizen of the United States, am over the age of eighteen, and am competent to testify. The following statements are true and correct and based on my personal knowledge:

1. I am the Director of Benefit Contracts for the Employees Retirement System of Texas ("ERS"), the agency that provides retirement and other benefit programs for state of Texas employees, retirees, and their dependents ("GBP plan participants").
2. ERS administers the Texas Employees Group Benefits Program ("GBP"), which provides coverage for health, life, dental, Voluntary Accidental Death & Dismemberment, and short and long-term disability for GBP plan participants.
3. As of August 31, 2016, GBP health insurance plans cover about one of every 52 Texans.
4. As of August 31, 2016, ERS had approximately 556,500 GBP plan participants, about 439,200 of whom were participants in HealthSelect of Texas.

5. For participants in HealthSelect of Texas, ERS paid about \$2.8 billion in medical and pharmacy claims in plan year 2016, which ran from September 1, 2015 to August 31, 2016.

6. In the current plan year, HealthSelect excludes coverage for gender reassignment surgery-related services and non-medically necessary abortion (except in cases of criminal activity).

7. I am aware that on May 18, 2016, the United States Department of Health and Human Services published a new rule, 45 C.F.R. § 92.1 *et seq.* ("Rule"), to interpret Section 1557 of the Affordable Care Act.

8. Section 92.4 of the Rule interprets "on the basis of sex" contained in Title IX to include "gender identity" and "termination of pregnancy."

9. If the Rule prohibits health insurance plans from categorically excluding coverage for gender reassignment surgery-related services, then ERS will have to modify GBP health insurance plans to cover these procedures to the extent required by applicable law.

#### **DECLARATION UNDER PENALTY OF PERJURY**

I, Robert P. Kukla, a citizen of the United States and a resident of Texas, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing Declaration is true and correct.

Executed this 16<sup>th</sup> day of December, 2016.



Robert P. Kukla  
Director of Benefit Contracts  
Employees Retirement System of Texas